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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,164	11/17/2003	Richard Watson	80337.00010	4106

32584 7590 06/20/2005

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EXAMINER

BOGART, MICHAEL G

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/715,164	WATSON, RICHARD	
	Examiner	Art Unit	
	Michael G. Bogart	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20 February 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

Claims 21-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2, 13, 15, 17, 23 and 29-31 of U.S. Patent No. 6,648,862 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the issued patent claims every limitation of the claimed invention except for the I/O unit on the control unit. It is widely known in the art to apply input and output controls on a wide variety of electronic circuits in order to provide a means of controlling them.

Claim 28 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 of U.S. Patent No. 6,648,862 B2 in view of Walker (US 5,741,237 A).

'862 fails to claim a limitation where the chamber is transparent. Walker teaches that it is known in the art to use transparent canisters for collecting such material in order to visually inspect its content without opening the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-25 rejected under 35 U.S.C. § 103(a) as being unpatentable over Skalla (US 5,522,808 A).

Regarding claim 21, Skalla teaches a personally portable vacuum desiccator (2) comprising:

- a chamber (6) having a trapping agent (96)(col. 8, lines 42-49);

- a vacuum pump member (50) in gas/liquid communication (52) with the outlet port of the chamber (6);

- a motor operably connected connected to said vacuum pump (50)(figure 1)(col. 7, lines 53-65, incorporating by reference, Ametek Model No. 116763-13, which is an electrical motor powered vacuum, as a representative vacuum unit (see Ametek Product Bulletin for Model 116763-13); and

- a tube (10) in gas/liquid flow communication with said chamber (6);

- said tube (10) being positionable in gas/liquid flow communication with a wound or incision on a user;

- the vacuum desiccator (2) being transportable (figure 1);

- said vacuum pump (50) being operable to draw fluid from the wound or incision through said tube (10) and into said chamber (6);

- said trapping agent (96) having a capacity for trapping a volume of the fluid.

Skalla thus teaches the claimed invention except for the desiccator being transportable *on* a user's person.

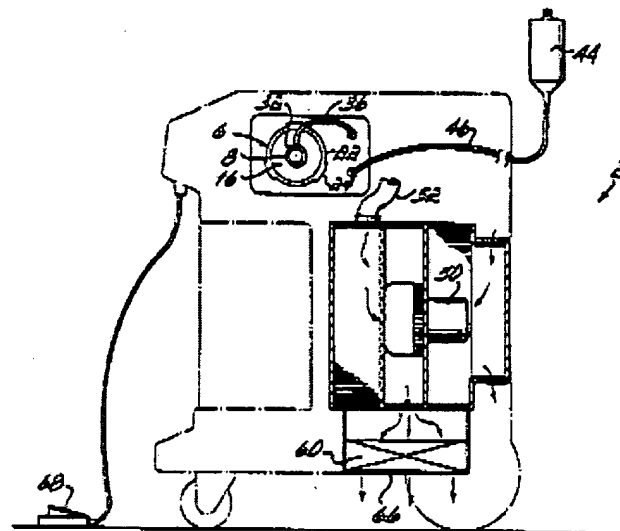


FIG. 1

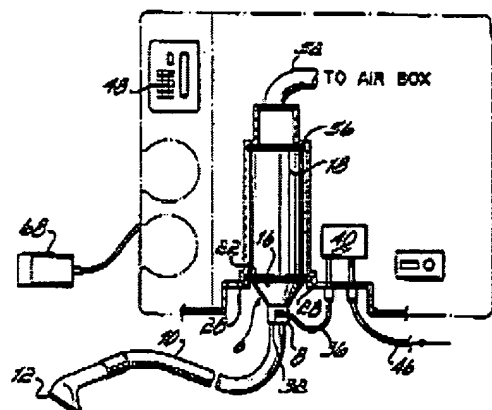


FIG. 2

Absent an unexpected result, making what is known in the prior art portable, can not patentable distinguish an invention over the prior art. *In re Lindberg*, 194 F.2d 732, 93 USPQ 23 (CCPA 1952) (Fact that a claimed device is portable or movable is not sufficient by itself to patentably distinguish over an otherwise old device unless there are new or unexpected results.). MPEP § 2144.04 (V).

Regarding claim 22, Skaller teaches a trapping agent that is a desiccant (col. 8, lines 42-49).

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Regarding claim 23, Skaller teaches a tube (10) comprising a single passage gal/liquid flow path.

Regarding claim 24, Skaller teaches a trapping agent (96) disposed in a removable cartridge (16, 18).

Regarding claim 25, Skalla teaches a control circuit (48, 68) which controls the motor and pump (50)(col. 8, lines 1-7).

Claims 26 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Skalla as applied to claims 1-25 above, and further in view of Lichtenstein (US 4,464,172).

Lichtenstein teaches an automated medical care system that employs a pressure sensor (PS2) and an I/O circuit (101). At the time of the invention, it would have been obvious to one of ordinary skill in the art to add these elements to the device of Skalla in order to automate its functions. See *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958) (Appellant argued that claims to a permanent mold casting apparatus for molding trunk pistons were allowable over the prior art because the claimed invention combined "old permanent-mold structures together with a timer and solenoid which automatically actuates the known pressure valve system to release the inner core after a predetermined time has elapsed." The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.). MPEP § 2144.04 (III).

Claim 28 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Skaller as applied to claims 1-25 above, and further in view of Walker.

Skaller fails to claim a limitation where the chamber is transparent. Walker teaches that it is known in the art to use transparent canisters for collecting such material in order to visually inspect its content without opening the device.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the transparent feature of Walker to the device of Skaller in order to allow such a person to visibly see the interior of the device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Larry Schwartz may be reached at phone number (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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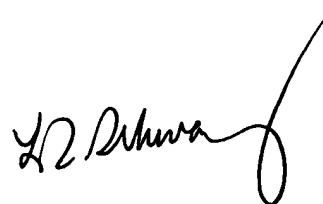
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A handwritten signature in black ink, appearing to read "M. Bogart", with a long horizontal stroke extending to the right.

Michael Bogart

13 June 2005

A handwritten signature in black ink, appearing to read "Larry I. Schwartz", with a large, stylized loop at the end.

Larry I. Schwartz
Supervisory Patent Examiner
Group 3700